THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 7349 of 2006

Dated: 10.09.2007

Between:

Smt K. Uma Maheswari W/o Ve. Ramachander Rao, aged about 42 yers.

.... PETITIONER

AND

C.B.M.U.P. School, Allipuram, Visakhapatnam, rep its Correspondent and one another

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No.7349 of 2006

Order:

This writ petition is filed seeking a Mandamus declaring the action of the respondents in not fixing the pay scale of the petitioner in the time scale of Rs.3750-7600/- with effect from 07.08.2005 with all consequential benefits, as illegal and arbitrary, and consequently to direct the respondents to fix the pay scale of the petitioner in the time scale of Rs.3750-7600/- with effect from 07.08.2005.

The petitioner states that in pursuance of the notification issued by the 1st respondent-School for selection to the post of Hindi Pandit Grade-II in the category of O.C. (Woman), her name was sponsored by the Employment Exchange, and the

1st respondent-School, after conducting regular selection and after obtaining necessary approval from the 2nd respondent, has appointed her as Hindi Pandit Grade –II in the category of O.C. (Woman), vide proceedings dated 07.08.2003. She states that in the appointment order it is stated that she was put on probation for two years on a remuneration of Rs.1,200/- per month during the first year and Rs.1,500/- per month during the second year. While so, the 2nd respondent, without issuing any notice and without following the due process of law, vide proceedings dated 30.09.2003, cancelled her appointment on the ground that the post on which she was appointed is reserved for S.C. (Woman) candidate, but not for O.C. (Woman) candidate. Aggrieved by the said proceedings, she filed a Writ Petition in W.P. No. 21583 of 2003, which was allowed by this Court, by order dated 05.03.2004. Thereafter, based on the proceedings

dated 05.07.2004 issued by the 2nd respondent, she was reinstated into service in the

1st respondent-School, and since then she has been continuously working. The case of the petitioner is that her two years time of probation had ended on 07.08.2005 itself and from that date onwards she is entitled for regular scales, which were not fixed by the respondents so far, in spite of her making representations. Aggrieved by the said action of the respondents, the present Writ Petition is filed.

A detailed counter affidavit is filed by the 2nd respondent-District Educational Officer, *inter alia*, stating that after disposal of the Writ Petition filed by the petitioner in W.P. No. 21583 of 2003, the petitioner was reinstated into service, and the 2nd respondent, vide proceedings dated 31.07.2004, directed the 1st respondent-School to issue one month notice to the petitioner stating that her appointment as Grade-II Hindi Pandit is not valid because it was made against the reserved post by concealing the real facts. In spite of that, the 1st respondent-Management has not issued any notice to the petitioner and allowed her to continue illegally in the said post, and therefore, the petitioner is not entitled to any regular pay scales. It is also the stand of the 2nd respondent that since Writ Petition Nos. 16202 and 20063 of 2003, filed by one

Sri Rev. Kantharaju and others against the 1st respondent-School, is pending before this Court, the 1st respondent-School was instructed that the reinstatement orders of the petitioner are subject to outcome of W.P. Nos. 16202 and 20063 of 2003. Hence, the petitioner is not entitled for any relief.

Heard the learned counsel for the petitioner and the learned Government Pleader for School Education. In spite of service of notice, none appears for the 1st respondent-School nor is there any representation made on its behalf.

Though the matter was adjourned on more than four occasions with a direction to the learned Government Pleader to get instructions with regard to the action taken by the Correspondent of the 1st respondent-School as against the petitioner, pursuant to the directions of the 2nd respondent, he failed to obtain proper information.

On the other hand, learned counsel appearing for the petitioner submitted that as on today, no notice is issued by the Management of the 1st respondent-School to the petitioner canceling her appointment and the petitioner is still working.

It is clear from the material placed before this court that as on today the petitioner has neither been removed nor her appointment has been cancelled by any authority. Initially an attempt was made by the 2nd respondent to cancel the appointment of the petitioner, but this Court in W.P. No. 21583 of 2003 set aside the order passed by the 2nd respondent-District Educational Officer. A perusal of the appointment order of the petitioner, which was ratified by the then District Educational Officer, shows that after completion of her probation period of two years, the petitioner is entitled for regular scales. According to the petitioner she has been working since four years and that she had completed her two year probation on 07.08.2005. The dates, mentioned by the petitioner in her writ affidavit, are not denied by the 2nd respondent.

One of the grounds taken by the respondent-District Educational Officer is that since W.P. No. 16202 of 2003 filed by one Sri Rev. Kantharaju and others against the

1st respondent-School is pending, and therefore, the petitioner is not entitled to pay scales. This contention of the respondent cannot be accepted, becaused the said writ petition was dismissed for default by order of this Court dated 10.09.2007.

Even though learned counsel for the petitioner relying upon the

judgment of this Court in **GOVERNMENT OF A.P AND OTHERS VS. P.THIRUMALA DEVI AND ANOTHER**[1], submitted that Rule of Reservation does not apply to private educational institutions, and in view of that, the petitioner cannot be denied for the fixation of regular pay scales, I am not inclined to go into that issue because as on today the undisputed fact remains the petitioner is still working and she had already completed her two year. In the circumstances, the respondents cannot deny the regular pay scale to the petitioner.

Accordingly, the Writ Petition is allowed. There shall be directions as prayed for to the respondents directing them to fix the pay scale of the petitioner w.e.f. 07.08.2005 and pay all the consequential benefits. No order as to costs.

_____

N.V. RAMANA, J.

Date: 10.09.2007
KA

---

[1] 2002 SUPPL.(1) ALD 91 (DB)